



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/171386

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2016, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Grant County Dept. of Social Services to Medical Assistance (MA) for the Family Care Program (FCP), a hearing was held on March 2, 2016, at Lancaster, Wisconsin, with the ALJ appearing by telephone.

The issue for determination is whether the county correctly discontinued MA due to petitioner not having an authorized representative.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Grant County Dept. of Social Services
P.O. Box 447
Lancaster, WI 53813

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Grant County.
2. Petitioner has been receiving MA and FCP for several years. In early 2015 her case transferred from Richland to Grant County, and services continued. Throughout this period petitioner's adult daughter has been the primary contact person.

3. The county scheduled an annual renewal telephone appointment on December 15, 2015. Petitioner's daughter answered the call and said she had petitioner's power-of-attorney. The worker noted that there was no authorized representative listed in the record, so the worker declined to do the interview. The worker then tried to complete the renewal directly with petitioner but was informed by staff at petitioner's residence that petitioner was incapacitated. A doctor's statement to the effect was forwarded to the county worker.
4. The county then received an Authorized Representative form signed by petitioner authorizing her daughter. It also received a health care power-of-attorney that petitioner had signed in 2010. The county determined that the new Authorization was invalid because of petitioner's incapacity, and the 2010 power-of-attorney was for health care decisions only. Petitioner's MA ended effective January 1, 2016 because the review was not completed.
5. FCP staff at [REDACTED] have continued to provide services to petitioner despite the MA ending.

DISCUSSION

All MA applications and renewals must be signed by the applicant/recipient or one of the following: a guardian, an authorized representative, someone with durable power-of-attorney, or "someone acting responsibly for an incompetent or incapacitated individual pending a guardianship determination." MA Handbook, §2.5.1. In this case the county did not allow petitioner's daughter to act on the renewal because petitioner was incapacitated, and her daughter was not a guardian, authorized representative, or durable power-of-attorney. The county worker referred petitioner to county legal staff to start guardianship proceedings, but no action has been taken yet and petitioner's daughter has indicated that she does not believe guardianship is necessary.

I note first off that a simple solution to this problem would be a statement from petitioner's doctor saying that despite her general incapacity she is capable of authorizing her daughter to represent her. However, since I cannot assume petitioner's doctor would make such a statement, I will review the situation as presented to me.

The key issue here is the Handbook provision allowing someone acting responsibly on the person's behalf to sign the application and complete the renewal. The Handbook allows this to occur only pending a guardianship proceeding. The law, however, is different.

The Wisconsin Administrative Code, §DHS 102.01(7) provides: "Each application form shall be signed by the applicant or the applicant's caretaker relative..., legal guardian, authorized representative or, where the applicant is incompetent or incapacitated, by someone acting responsibly for the applicant." There is no requirement in the code that a guardianship be pending. The language is the same in Wis. Admin. Code, §DCF 10.31(4)(b) concerning FCP applications.

I conclude that in this case the county should accept the renewal application signed by petitioner's daughter. She clearly is acting responsibly for petitioner. The conclusion is bolstered by the fact that petitioner's daughter has been acting as her representative all along; she noted that she has received and continues to receive notices concerning petitioner's case.

Wis. Admin. Code, §DHS 102.01(6) provides that the person acting on the applicant's behalf is responsible for providing full, correct, and truthful information to the agency, so petitioner's daughter's ability to act clearly goes to the entire eligibility process.

CONCLUSIONS OF LAW

Petitioner's daughter is allowed to file petitioner's MA and FCP renewal applications because petitioner is incapacitated and she is acting responsibly on petitioner's behalf.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to allow petitioner's daughter to file petitioner's renewal application and to take part in the renewal process. The county shall take the action and determine petitioner's MA eligibility back to January 1, 2016, within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of March, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 4, 2016.

Grant County Department of Social Services
Office of Family Care Expansion
Health Care Access and Accountability